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FCC 97-24

January 31, 1997

MM Docket No. 93-25

Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992, Direct Broadcast Satellite Service Obligations

COMMENTS SOUGHT IN DBS PUBLIC INTEREST RULEMAKING

Comment Date: March 31, 1997

Reply Comment Date: April 30, 1997

Section 25 of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act") added a new Section 335 to the Communications Act of 1934 that directed the Commission to initiate a rulemaking to impose public interest or other requirements for providing video programming on direct broadcast satellite ("DBS") service providers. On March 2, 1993, the Commission released a Notice of Proposed Rule Making seeking comment on its proposals to implement the different provisions of section 25 ("DBS Public Interest NPRM").¹ On September 16, 1993, after the Commission had received comments and reply comments in this proceeding, the United States District Court for the District of Columbia held that section 25 of the 1992 Cable Act was unconstitutional.² This ruling effectively froze the DBS Public Interest NPRM pending the Commission's appeal of the decision. Nearly three years later, on August 30, 1996, the United States Court of Appeals for the District of Columbia Circuit reversed the District Court and held that section 25 was constitutional.³

In light of the relatively long interval between release of the DBS Public Interest NPRM and the Court's recent decision upholding section 25, the Commission, by this public notice, seeks to update and refresh the record in this proceeding. The DBS industry has grown and changed dramatically over the last four years. Accordingly, the Commission requests new and revised comments on each of the issues raised in the DBS Public Interest Rulemaking and on any other issues relevant to implementation of section 25.

¹ 8 FCC Rcd 1589 (1993).

² Daniels Cablevision, Inc. v. United States, 835 F. Supp. 1 (D.D.C. 1993).

³ Time Warner Entertainment Co., L.P. v. FCC, 93 F.3d 957 (D.C. Cir. 1996) ; petition for rehearing pending.

Section 25(a) of the 1992 Cable Act (47 U.S.C. § 335(a)) states:

The Commission shall, within 180 days after the date of enactment of this section, initiate a rulemaking proceeding to impose, on providers of direct broadcast satellite service, public interest or other requirements for providing video programming. Any regulations prescribed pursuant to such rulemaking shall, at a minimum, apply the access to broadcast time requirement of section 312(a)(7) and the use of facilities requirements of section 315 to providers of direct broadcast satellite service providing video programming. Such proceeding also shall examine the opportunities that the establishment of direct broadcast satellite service provides for the principle of localism under this Act, and the methods by which such principle may be served through technological and other developments in, or regulation of, such service.

With respect to this section of the statute we seek updated comments on issues that include but are not limited to the following: How should the requirements of sections 312(a)(7) and 315 of the Communications Act be applied to DBS providers?⁴ What "public interest or other requirements", if any, should be imposed on DBS providers in addition to the minimum requirements described above? In the 1993 DBS Public Interest NPRM we tentatively proposed not to adopt additional public service requirements, based on "the flexible regulatory approach taken for DBS and its early stage of development."⁵ Should the rapid deployment of the DBS industry over the last several years, including technological advances that may in the near future allow DBS providers to offer some local programming alter this conclusion? If so, how?

We also seek updated comments on how we should apply the separate requirements imposed by section 25(b) of the 1992 Cable Act. Section 25(b)(1) mandates that a DBS provider "reserve a portion of its channel capacity, equal to not less than 4 percent nor more than 7 percent, exclusively for noncommercial programming of an educational or informational nature." Among the questions we asked in our NPRM on this section were whether, and if so how, we should define the term "noncommercial" programming.⁶ Pursuant to section 25(b)(3), this channel capacity must be made available, to "national educational programming suppliers, upon reasonable prices, terms, and conditions." What other entities, if any, must be afforded access to channel capacity under this provision?⁷ How should the term "reasonable prices, terms, and conditions" be defined? How should these section 25(b) provisions be interpreted and implemented?⁸

Because DBS, as a satellite service, is likely to be delivered on a regional rather than national basis, we seek comment on the international ramifications of any public interest obligations we may adopt. Finally, we seek comment on any other issues relevant to the implementation of section 25.

Comments filed in response to this Public Notice should be filed on or before March 31, 1997

⁴ See DBS Public Interest NPRM, 8 FCC Rcd 1589 at ¶¶ 21-28.

⁵ Id. at ¶ 29.

⁶ Id. at ¶ 44.

⁷ Id. at ¶ 43.

⁸ See Id. at ¶¶ 37-51.

and replies should be filed on or before April 30, 1997. Commenters should note that while this Public Notice references the original docket number (MM Docket No. 93-25), this proceeding will be handled by the International Bureau. Copies of relevant documents can be obtained in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. For further information contact John Stern at (202) 418-0746 or Brian Carter at (202) 418-2119.

Action by the Commission January 30, 1997, Chairman Hundt, Commissioners Quello, Ness and Chong.